

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1978

Supreme Court, U. S.
FILED

DEC 23 1978

MICHAEL NOX, JR., CLERK

No. **78-1031**

ALFRED Y. K. AU,

Petitioner,

v.

~~JOHN C. LANHAM, Circuit Judge
State of Hawaii~~

HOYT F. KELLY, R. M. COOKE,
HENRY B. CLARK, JR.,
JAMES T. KAWAMURA and
L. A. WILLS, TRUSTEES
dba
FINANCIAL PLAZA OF THE PACIFIC,

Respondents,

~~MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF
CERTIORARI TO THE HONORABLE JOHN C. LANHAM,
JUDGE, CIRCUIT COURT, STATE OF HAWAII, his alternate
or substitute and
PETITION FOR A WRIT OF CERTIORARI TO THE HONOR-
ABLE JOHN C. LANHAM, JUDGE, CIRCUIT COURT, STATE
OF HAWAII, his alternate or substitute.~~

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INDEX

	<i>Page</i>
Table of Authorities	ii
Motion for leave to file petition for writ of certiorari to the Honorable John C. Lanham, Judge, Circuit Court, State of Hawaii, his alternate or substitute	1
Petition for a Writ of Certiorari to the Honorable John C. Lanham, Judge, Circuit Court, State of Hawaii, his alternate or substitute	3
Opinions below	3
Jurisdiction	4
Statutes, Laws, and Rules involved.....	4
Questions presented	5
Statement of the Case	5
Summary of argument	8
Argument:	
A. <i>Order Granting New Trial Null and Void ...</i>	8
I. Final Judgment Not Vacated or Amended	8
II. Amended Judgment Beyond 10 days	9
III. Decision Made Ex Parte	10
IV. Unclean Hands	11
V. Impartiality Impaired	12
VI. Illegal Allegation	13
B. <i>New Trial Not Warranted</i>	14
C. <i>No Relief from Supreme Court, State of Hawaii</i>	15
D. <i>Unnecessary Delay Results in Undue Hardship</i>	17
Conclusion	17
Affidavit of Service	19
Appendix A – Opinions, judgments, and decisions of the Honorable John C. Lanham, Circuit Judge, State of Hawaii, with supporting and related documentations.	
Appendix B – Opinions and judgments of the Supreme Court of the State of Hawaii.	

TABLE OF AUTHORITIES

CASES	Page
<i>Dakan v. Superior Court</i> 2 Cal App. 52, 82P. 1129	13
<i>Ellis v. State</i> 100 Fla 27, 129 So 106, 69 ALR 783	9
<i>Fidelity & C. Co. v. Huse & Carleton</i> 272 Mass 448, 172 NE 590, 72 ALR 1143 ..	9
<i>Freid v. McGrath</i> 133 F2d 355	10, 14
<i>Jenkins v. State</i> 80 S. E. 688, 689, 14 Ga. App. 276	9
<i>Kanaster v. Chrysler Corp.</i> 195 F2d 104	16
<i>Kanaster v. Chrysler Corp.</i> 199 F2d. 610	17
<i>New York Football Giants, Inc. v. Los Angeles Chargers Football Club Inc.</i> CA5 Miss 291 Fd 471	12
<i>Osborn v. Bank of United States</i> 9 Wheat (US) 738, 6 L ed206, 34d	14
<i>Smith v. McCool</i> 16 Wall (US) 560, 21 L ed 324	9
<i>Stella v. Mosele et al</i> 19 N.E. 2d 463, 435, 299, Ill App 53	11
<i>Vasconcellos v. Juarez</i> 37 Haw 365-66	15
 OTHER AUTHORITIES	
<i>Act 90, Session Laws of Hawaii 1972</i>	4, 16
<i>27 Am Jur 2d, 138</i>	12
<i>Hawaii Revised Statutes 1968</i>	4, 15
<i>Hawaii Rules of Civil Procedures (1972)</i>	4, 10, 16
<i>Seventh Amendment, U. S. Constitution</i>	2, 4, 5

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FINANCIAL PLAZA OF THE PACIFIC,
Respondents.

MOTION FOR LEAVE TO FILE PETITION FOR
WRIT OF CERTIORARI TO THE HONORABLE
JOHN C. LANHAM, JUDGE, CIRCUIT COURT,
STATE OF HAWAII, his alternate or substitute.

TO THE HONORABLE CHIEF JUSTICE and ASSOCIATE
JUSTICES OF THE SUPREME COURT OF THE UNITED
STATES:

Comes now ALFRED Y. K. AU, the petitioner herein,
who respectfully submits:

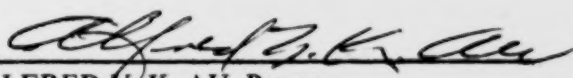
1. That he was the prevailing party in *Au v. Kelly, et al*,
Civil No. 47984, in the First Circuit Court, State of Hawaii.

2. That judgment was entered for him, in the amount of
\$31,500.00 together with costs on July 29, 1977.
(Appendix A-3, A-4).

3. That the subsequent order (Appendix A-22) on October 25, 1977 for a new trial on the issue of damages only is not only a departure from the accepted and usual course of judicial proceedings, but more seriously, a denial of the Seventh Amendment, or the Constitutional guarantee of trial by jury.

4. That Petitioner's three attempted appellate efforts for relief, sought in the Supreme Court of the State of Hawaii have been frustrated by denials. (Appendix B).

WHEREFOR, Petitioner, having exhausted all available avenues for relief through other appellate processes, now seeks and prays that this Court grants the Motion for Leave to File Petition for Writ of Certiorari to the Honorable John C. Lanham, Judge, Circuit Court, State of Hawaii, his alternate or substitute. This Court represents the last resort Petitioner has, in his efforts to have the grave issues involving the Seventh Amendment and the legal enigma involving the writ of certiorari and the Supreme Court of the State of Hawaii, be heard and adjudicated.


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Honolulu, Hawaii 96816
For Petitioner

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PETITION FOR A WRIT OF CERTIORARI TO THE
HONORABLE JOHN C. LANHAM, JUDGE,
CIRCUIT COURT, STATE OF HAWAII, his al-
ternate or substitute.

ALFRED Y. K. AU, the petitioner herein, prays that a writ of certiorari be issued to the Honorable John C. Lanham, Judge, Circuit Court, State of Hawaii, to enjoin him, his alternate or substitute, from proceeding any further in the Order for a New Trial, dated October 25, 1977, in Civil No. 47984, in the Circuit Court of the First Circuit, State of Hawaii, until judgment has been pronounced on the regularity of his proceedings.

OPINIONS BELOW

The opinions below were as follows:

1. Judgment ordered and entered in favor of Petitioner, in the sum of \$31,500 together with costs, in Civil

No. 47984, in the Circuit Court of the First Circuit, State of Hawaii. (Appendix A-3, and A-4).

2. Order granting new trial on issue of damages only. (Appendix A-22).
3. Order denying petition for writ of certiorari. Petition filed *prior* to order for new trial on damages only, No. 6762, in the Supreme Court of the State of Hawaii. *Appendix, B-3.*
4. Denial of petition for writ of certiorari No. 6809, in the Supreme Court of the State of Hawaii, which petition was filed *after* order for new trial on damages only. *Appendix, B-4.*
5. Appeal on Civil No. 47984, First Circuit Court, State of Hawaii, *dismissed*; No. 6858, in the Supreme Court of the State of Hawaii. *Appendix, B-5.*

JURISDICTION

Having exhausted all available recourse and remedies, Petitioner now seeks the original jurisdiction of the Court, under 28 U.S.C. Sec. 1651(a) to resolve the grave issues concerning the violation of the Seventh Amendment, the laches and ploy in evidence, which, if allowed to go unchallenged, will make a mockery of our judiciary system, through the blatant denial of justice by a willful subversion of the judicial processes.

Where the Supreme Court of the State of Hawaii is caught in a quandary between its Rules and the laws of the State of Hawaii, jurisdiction of this Court must be invoked, as the only means of resolving the legal enigma.

STATUTES, LAWS AND RULES INVOLVED.

The following Statutes, Laws and Rules are involved in the consideration of this case:

1. *Hawaii Revised Statutes, 1968*, pages 619, 620.
2. *Act 90, Session Laws of Hawaii, 1972*, pages 355, 356.
3. *Hawaii Rules of Civil Procedures, As Amended May 15, 1972, Effective July 1, 1972.*

QUESTIONS PRESENTED

1. Whether the Constitutional guarantee of a trial by jury prohibits, inter alia, any circumvention of a jury's verdict.
2. Whether there has been circumvention, by the ignoring and the bypassing of a jury's verdict, which has been duly entered as a judgment of the court, and which has not been duly vacated or amended.
3. Whether there has been circumvention, by having ex parte consideration of a decision for a new trial.
4. Whether there has been circumvention, by the failure to grant a continuance or a disqualification when the court's impartiality has been impaired.
5. Whether there has been circumvention, by granting a motion for a new trial, which is, *in fact*, an amended judgment beyond 10 days.
6. Whether there has been circumvention by granting a motion which contains an allegation, the acceptance of which would deny the right of self representation.
7. Whether a new trial on the issue of damages could be granted even where there is a sufficiency of evidence to justify the judgment awarded based upon the jury's verdict.
8. Whether the Supreme Court of the State of Hawaii is with or without powers to consider certiorari.

STATEMENT OF THE CASE

This case seeks an affirmation of the Seventh Amendment of our Constitution, relating to the guarantee of the right to a trial by jury.

The facts of the case submitted herewith present a patently evidential case of a conspiratorial effort, willfully and wittingly executed, to bypass and ignore the jury's verdict which was returned and entered in favor of petitioner. And thus denying him thereby, his rights under the Seventh Amendment.

The case involves an accident in which Petitioner's right wrist was permanently injured by Defendants' swinging door. A chronology of the post trial events, the basis of this cause of action, is as follows:

1. *July 27, 1977 at 11:15 a.m.*
A twelve member jury returned a unanimous special verdict in favor of petitioner, awarding \$45,000.00 in general damages, but assessing him 30% for contributory negligence. (Appendix A-1, A-2).
2. *July 29, 1977 at 10:36 a.m.*
Judgment in favor of petitioner for \$31,500 together with costs was ordered to be entered. (Appendix A-3).
3. *July 29, 1977 at 10:40 a.m.*
Notice given of entry of judgment. (Appendix A-4).
4. *Aug. 5, 1977*
Motion for new trial by defendants. (Appendix A-5, A-6).
5. *Aug. 5, 1977*
Hearing on Motion set for *Friday, 26th day of August, 1977 at 8:30 a.m.* (Appendix A-7).
6. *Aug. 22, 1977 at 3:50 p.m.*
Memorandum by petitioner in opposition to Motion for New Trial. (Appendix A-8).
7. *Aug. 26, 1977*
Hearing on Motion for New Trial was held as scheduled. *No decision was rendered.* Both parties were asked to file written memorandum in ten days.
8. *Sept. 2, 1977 at 1:01 p.m.*
Memorandum filed by Petitioner. (Appendix A-9).
9. *Sept. 6, 1977*
Memorandum filed by defendants. (Appendix A-10).
10. *Sept. 22, 1977*
Defendants take deposition. (Appendix A-11, A-12).
11. *Oct. 3, 1977*
Communication to petitioner from defendants' counsel, submitting Order Granting Defendants' Motion for New Trial for approval. (Appendix A-13, A-14).
12. *Oct. 7, 1977*
Petitioner's letter, returning instrument unsigned, stating objections. (Appendix A-15).
13. *Oct. 13, 1977*
Copy of letter to Judge Lanham, from defendants' counsel, asking for his signature to Order, "*according to the decision on the Motion for New Trial rendered*

- August 26, 1977*"; which was contrary and in contradiction to Item 7 above. (Exhibit A-16).
14. *Oct. 14, 1977*
Call from Judge Lanham's Office, setting *Oct. 20th, Thursday, at 4:00 p.m.*, for hearing re: petitioner's letter of Oct. 7, 1977.
(See memo of petitioner's wife, A-17).
 15. *Oct. 19, 1977 at 4:21 p.m.*
Petitioner filed Motion for Leave to File Petition for Writ of Certiorari, in the Supreme Court of the State of Hawaii, No. 6762. (Appendix B-1).
 16. *Oct. 19, 1977 at 4:24 p.m.*
Petitioner's request for a continuance of hearing scheduled for October 20, 1977 at 4:00 p.m. was received by Judge Lanham's office. (Appendix A-18).
 17. *Oct. 20, 1977 at 8:54 a.m.*
Petitioner's Petition for Writ of Certiorari was accepted for filing by Clerk of the Supreme Court of the State of Hawaii. (Appendix B-2).
 18. *Oct. 20, 1977 at 9:35 a.m.*
Judge Lanham's office acknowledge receipt of copy of *Au vs. Lanham, Petition for Writ of Certiorari*, Supreme Court of the State of Hawaii. No. 6762. (Appendix A-19).
 19. *Oct. 20, 1977 at 9:50 a.m.*
Petitioner's request for continuance denied. Hearing scheduled for 4:00 p.m. today will go on as scheduled. (See memo of petitioner's wife, A-20).
 20. *Oct. 20, 1977 at 10 a.m.*
Attorney for Financial Plaza of the Pacific, defendants, acknowledged receipt of copy of Petition for Writ of Certiorari. (Appendix A-21).
 21. *Oct. 20, 1977 at 4:30 p.m.*
The scheduled hearing was held. However, the subject of petitioner's letter of Oct. 7, 1977 was not discussed at all. (See item 13 above.) Instead, the trial judge took the occasion to render his decision on the motion for a new trial.
 22. *Oct. 25, 1977*
Order granting defendants' motion for new trial was entered on the issue of damages only. (Appendix A-22).

23. *Oct. 26, 1977 at 8:14 a.m.*
The above Order was filed with the Clerk of the First Circuit Court, State of Hawaii. (Appendix A-22).
24. *November 4, 1977*
Petition for Writ of Certiorari, No. 6762, was denied by the Supreme Court of the State of Hawaii. (Appendix B-3).
25. *December 5, 1977*
Petition for Writ of Certiorari, No. 6809, filed November 22, 1977, was denied by the Supreme Court of the State of Hawaii. (Appendix B-4).
26. *October 6, 1978*
Appeal from the Order Granting Defendants' Motion for a New Trial, filed October 26, 1977, No. 6858 was denied by the Supreme Court of the State of Hawaii. (Appendix B-5).

SUMMARY ARGUMENT

A jury's verdict which has been duly ordered and entered as the judgment of the court may be vacated or amended for cause, but cannot be circumvented by willful acts of subversion or of omission.

The grant of a new trial cannot be used to controvert the sufficiency and adequacy of evidence which can justify the amount of damages awarded as a result of the jury's verdict based on its findings.

ARGUMENTS

- A. There are six arguments why the order granting the motion for a new trial is null and void. They are as follows:

I.

FINAL JUDGMENT NOT VACATED OR AMENDED

The Order Granting Defendants' Motion for New Trial (Appendix A-22) contains no stipulation for the vacating or amending of the final judgment entered in favor of Petitioner for the sum of Thirty-One Thousand Five Hundred Dollars (\$31,500.), together with costs. (Appendix A-3, A-4).

As the record stands we have the paradox of a final judgment being virtually ignored, bypassed and superseded by a motion.

Conceivably, the accepted status of a final judgment where issues are deemed to have been decided and conclusions to have been made, should prevail over the status of a "Motion" where there are mere allegations, yet to be proven.

Notwithstanding the pressure exerted by defendants, the trial court could not see its way clear to repudiate the judgment previously entered for petitioner by vacating, and thus setting aside the jury's verdict *in its entirety*. To express its reservations, the trial court qualified its order by stating "that a new trial in the above entitled case shall be had only on the issue of damages there."

Therefore, it is contended that the failure to vacate the previous judgment was not an innocuous omission, but rather, an intended omission; to be substantiated by the qualification made.

It follows therefore that the resulting paradox can only be resolved by deciding which should prevail, the judgment or the motion?

We contend that a final judgment which has been entered, and which remains unvacated and unamended cannot be ignored or superseded by a contrary motion. By the guarantee of the Seventh Amendment, the results of a trial by jury cannot be cast aside and ignored so unceremoniously as yesterday's menu.

The unanimous verdict of the jury (Appendix A-1, A-2) is the basis or foundation of the judgment entered for Petitioner. (Appendix A-3, A-4). *Smith v. McCool*, 16 Wall. (US) 560, 21 L ed 324; *Fidelity & C. Co. v. Huse & Carleton*, 272 Mass 448, 172 NE 590, 72 ALR 1143.

The judgment so entered has given life and effectiveness to the jury's verdict. *Ellis v. State*, 100 Fla 27, 129 So 106, 69 ALR 783.

In *Jenkins v. State*, 80 S. E. 688, 689, 14 Ga. App. 276, it was determined that a new trial cannot be had so long as the verdict remains unreversed. And so the judgment based on the verdict for the Petitioner must be reaffirmed.

II.

AMENDED JUDGMENT BEYOND 10 DAYS

The Motion prayed for by Defendants was for a new trial or remittitur. (Appendix A-5).

The Motion for a New Trial was for *all* issues as per order prepared by Defendants. (Appendix A-13, A-14).

The Order granted for a New Trial, however, limited the issue to damages only. (Appendix A-22).

The argument here is that since the Order was for a new trial limiting the issue to damages only, it was NOT a grant of Defendants' Motion, which was for a new trial on *all* issues.

As argued above, there was no intent of the trial court to negate or vacate the jury's verdict *in its entirety*.

The inevitable conclusion is that the Order of October 25, 1977 (Appendix A-22) was an Amended Judgment, affirming the jury's verdict; except for the issue of damages.

However, the Order of October 25, 1977 (Appendix A-22), as an Amended Judgment exceeded the 10 days provided by the rules, judgment having been entered July 29, 1977. (Appendix A-4). *Hawaii Rules of Civil Procedures*, Rule 59(d).

Furthermore, as an Amended Judgment, it is invalid because there was no basis, foundation, or cause, expressed or implied. *Freid v. McGrath*, 133 F2d, 355.

III.

DECISION MADE EX PARTE

Hearing on the Motion for a New Trial was on Friday, 26th of August, 1977. (Appendix A-7).

No decision was rendered as both parties were asked to file written memorandum. Petitioner complied on Sept. 2, 1977, and Defendants, on Sept. 6, 1977. (Appendix A-9, A-10).

On or about September 22, 1977, an ex parte decision was made to abort the judgment already entered in favor of Petitioner, and to grant a new trial.

This is evidenced by the notice of taking deposition filed by Defendants. (Appendix A-11, A-12).

Since judgment has already been entered, depositions can only be had with the leave of the court according to *Rule 27(b)*, *Hawaii Rules of Civil Procedures*.

But citing *Rule 31*, *Hawaii Rules of Civil Procedure* which applies to ongoing cases, defendants' intent is clear that the judgment on record was to be ignored.

The ex parte Order for a New Trial (Appendix-22) made reference to the original hearing on August 26, 1977, but nothing was mentioned of the final hearing on Oct. 20, 1977, in which the trial court rendered its decision on the motion for

a New Trial. And most important, no mention was made of the previously submitted Order for a new trial on all issues. (Appendix A-13 to A-16).

The argument here is that the Defendants, as the movant for the Order for a New Trial must assume the burden of making proper showing. And it is incumbent upon the court to examine the Order whether a proper showing is made.

In *Stella v. Mosele et al.*, 19 N.E. 2d 433, 435, 299 Ill. App. 53, where the issue was the appointment of a receiver, and movant was the plaintiff, the court said:

"Where an application is made for the appointment of a receiver, it is incumbent upon the court to examine the bill to ascertain whether a proper showing is made. Any answer that might have been filed by defendant would not remedy the defect of the complaint in failing to set forth adequate ground for appointing a receiver.

"We are of the opinion that the appointment was improvidently made upon the record here presented, and therefore the order of the Superior Court is reversed."

In like manner, we argue that the Order for a New Trial was improvidently made upon the record here presented, and therefore the order should be reversed.

IV.

UNCLEAN HANDS

Defendants, in their demand letter to the judge that he sign the Order for a new trial on all issues (Appendix A-16) made a statement of an untrue fact: that a decision was rendered on August 26, 1977.

As stated above, no decision was made on that day. The decision was made on the final hearing on October 20, 1977, in which a new trial was ordered, limiting the issue to damages only.

It is patently clear that the trial court was inveigled and compromised by Defendants' demand letter (Appendix A-16) which states that the attached Order (Appendix A-14) was "per instructions from your law clerk."

Further proof that the trial court was taken in by the Defendants was the fact that Petitioner was notified on Oct. 14, 1977 (Appendix A-17) - only one day after Defendants' demand letter (Appendix A-16) dated October 13, 1977 was sent, - that a hearing will be held on October 20, 1977.

This was instantaneous service for Defendants, and the subject of the hearing to be held on October 20, 1977, was to be Petitioner's letter of October 7, 1977, stating his objections to Defendants' Order for a New Trial. (Appendix A-15).

Since Petitioner was to have been called to task, and not the Defendants, it must be construed that the trial court, wittingly or unwittingly, had made a tacit acceptance or sanction of Defendants' stance.

Whether it was a ploy or a conspiracy, we submit the argument of Unclean Hands.

"The maxim that he who comes into equity must come with clean hands necessarily gives wide range to the equity court's use of discretion in refusing to aid the unclean litigant; and accordingly, one's misconduct need not necessarily have been of such a nature as to be punishable as a crime or as to justify legal proceedings of any character, but any willful act concerning the cause of action which rightfully can be said to transgress equitable standards of conduct is sufficient cause of invocation of the maxim." Underscore supplied. 27 Am Jr 2d, 138. See also *New York Football Giants Inc. v. Los Angeles Chargers Football Club, Inc.* (CA 5 Miss) 291, Fd 471.

Where the trial court failed to invoke the Clean Hands doctrine, we now ask this Court to do so.

V.

IMPARTIALITY IMPAIRED

On Oct. 19, 1977 at 4:21 p.m. Petitioner had filed a Motion For Leave to File Petition for Writ of Certiorari, in the Supreme Court of the State of Hawaii. (Appendix B-1).

On Oct. 19, 1977 at 4:24 p.m. Petitioner hand delivered a written request to the Trial Court, seeking a continuance of the hearing scheduled for Thursday, October 20, 1977 at 4:00 p.m. (Appendix A-18).

On Oct. 20, 1977 at 8:54 a.m. the Petition for Writ of Certiorari was filed by the Supreme Court Clerk. (Appendix B-2).

On Oct. 20, 1977 at 9:35 a.m. a copy of the Petition for Writ of Certiorari, as filed was acknowledged by Trial Court's clerk. (Appendix A-19).

On Oct. 20, 1977 at 9:50 a.m. Judge Lanham's Office called that the hearing would be as scheduled. And thus denying the request for a continuance. (Appendix A-20).

As indicated above, it was to be a hearing on Petitioner's letter to Defendants, stating reasons for not approving the latter's Order for a New Trial on all issues. (Appendix A-17).

The hearing on Oct. 20, 1977 was conducted as scheduled. However, the matter taken up was not as scheduled.

The Trial Judge took the occasion to remedy a very fatal omission. He made a decision on the Motion for a New Trial, a decision previously represented by Defendants to have been made on August 26, 1977. (Appendix A-16). And thus he made a "cover-up" for Defendants and frustrated any move for his disqualification by Petitioner.

In *Dakan v. Superior Court*, 2 Ca. App. 52, 82P. 1129 on the subject of disqualification, it was remarked:

"The judge should not only be honest and impartial, but his acts and conduct should be such that there can be no foundation for questioning his motives."

Understandably he has the right and duty to proceed with the case if there are no disqualifying factors.

Continuing with the above quotation:

"On the other hand, where the facts are honestly stated, and when so stated they point to a certain condition that would absolutely influence men in the business transactions of life, and when applied to the particular case would lead a reasonable person to hesitate as to whether or not the judge could, under the circumstances, considering the weaknesses of human nature, entirely ignore such facts, there should be no hesitation in calling in another judge, so that the fountain head of justice should be above suspicion."

The argument here is that when the judge became an adversary of the Petitioner, in an action before the Supreme Court of the State of Hawaii, he should at least have granted a continuance. The better part of valor would be to have disqualified himself.

The Order of the trial court for a new trial (Appendix A-22) made under the circumstances of impaired impartiality should therefore be declared null and void.

VI.

ILLEGAL ALLEGATION

In their Motion for a New Trial, Defendants' 5th allegation was that their rights were substantially prejudiced by Petitioner appearing as his own counsel. (Appendix A-6).

In granting Defendants' Motion (Appendix A-22) without specifying the reasons therefor, the Trial Court has accepted the motion in its entirety — without exceptions or qualifications.

Therefore, the illegality of one assignment of prejudicial error will render the entire motion null and void. And likewise the Order granting it. For the motion must stand on all its allegations and assignments of errors, without severability.

In *Freid v. McGrath*, 133 F2d, 355, it was stated: "When the new trial is granted upon motion of a party, the grounds appear in the motion, as the reasons assigned by the movant in compliance with the requirements of Rule 599a."

Admittedly, if the Trial Court had chosen to make it an Amended Judgment, he may choose and pick the basis for his decision or judgment. And may, by so doing, possibly even to avoid that which is illegal.

Therefore the Order of October 25, 1977, (Appendix A-22) is illegal because it was a grant of a motion which contains an illegal allegation, the acceptance of which would necessarily mean the denial of Petitioner's right of self-representation.

In *Osborn v. Bank of United States*, 9 Wheat (US) 738, 6 L ed 206, 34d paragraph, Chief Justice Marshall, in delivering the opinion of the Court, stated: "Natural persons may appear in court, either by themselves or by their attorney."

B. The evidence at the trial is sufficient to justify the judgment awarded as a result of the jury's verdict based on its findings and conclusions. Therefore, no new trial is warranted.

On page 6, of the Record on Appeal, submitted to the Supreme Court of the State of Hawaii, we find in evidence, photostatic copies of the front page, where the total income is shown, of Petitioner's Tax Returns for the years 1974, 1975, and 1976. (Appendix A-23, A-24, A-25).

An examination of these copies (Appendix A-26, A-27, A-28) will show that Petitioner's income for the year 1974, or the year of the accident to be \$34,000.00. In 1975 it dropped \$6,000.00 to \$28,000.00. In 1976, it dropped \$11,000.00 to \$23,000.00. Thus, there is in evidence that from the year of the accident, 1974 to 1976. Petitioner had already sustained a drop of income of \$17,000.00. For 1977, the drop was another \$12,000.00. Projecting to 1984, Petitioner's retirement at 65 yrs., or another seven years at \$10,000.00 per year, we will

have \$70,000.00; which added to the \$12,000.00 for 1977, and the \$17,000.00 for 1975-76, we will have a total of \$99,000.00. Therefore the jury's determination of total damages \$45,000.00 cannot be construed as excessive in consideration of the evidence. (Appendix A-1).

In *Vasconcellos v. Juarez*, 37 Haw 364, 365-66, the Supreme Court of the State of Hawaii, held on the matter of exceptions to the jury awarded damages as being excessive in amount, as follows: On page 365:

"The power of this court to disturb a verdict on the ground of excessive damages is one which should be exercised with great caution and discretion, the duty of guarding against excessive verdicts necessarily resting to a large extent with the trial judge and a reviewing court giving great weight to the trial judge's approval of the verdict. Consequently it ordinarily will not do so where, as here, the trial judge has tacitly approved the verdict as not being excessive and no charge is made of abuse of judicial discretion."

We submit that the trial judge has entered his judgment based on the jury's verdict (Appendix A-3). And that he has not amended that judgment within the ten days permitted by the rules.

Furthermore, the use of Net Income returns to indicate economic loss in the assessment of damages was the theory of the case advanced by Defendants, who deposed Petitioner for the same information.

However, it remains for Petitioner to introduce them in evidence, over Defendants' objections, because it did not help the latter's cause.

In *Vasconcellos v. Juarez*, supra, it was determined that: "An appellant who acquiesced and participated in theory of trial on issue of damages will not be heard on appeal to complain for the first time."

C. Petitioner's failure to secure relief from the Supreme Court of the State of Hawaii can be attributed to the following:

1. The Extraordinary Legal Remedies, Part III. Certiorari, of the *Hawaii Revised Statutes*, 1968, 619, 620 was deleted by *Act 90, Session Laws of Hawaii*, 1972, 355, 356.

2. The Clerk of the Supreme Court of the State of Hawaii was most reluctant in accepting Petitioner's Motion for Leave to File Petition for a Writ of Certiorari, and the Petition for Writ of Certiorari.
3. The Motion was accepted for filing on Oct. 19, 1977 at 4:21 p.m. (Appendix B-1). However, the Petition (Appendix B-2) was not accepted for filing until the next day, October 20, 1977 at 8:54 a.m.

The acceptance of the Petition was no doubt based on the following provision of *Act 90, S.L.H. 1972, 356*:

"SECTION 4. The repeal or deletion of statutory provisions as to any writ shall not signify the abolition of that writ."

4. The Order of the Supreme Court of the State of Hawaii (Appendix B-3) denying the writ for insufficient grounds is understandable because at the time of the filing of the Petition, the trial judge had not shown his hand. The grounds were merely surmises based on allegations of Defendants.
5. The Order of the Supreme Court of the State of Hawaii (Appendix B-4) summarily denying the second Writ of Certiorari filed November 22, 1977, *after the trial court had acted*, is premised no doubt, upon the fact that the *Hawaii Rules of Civil Procedure*, As Amended May 15, 1972, Effective July 1, 1972, have no provisions for certiorari.

Therefore, the issue whether the Supreme Court of the State of Hawaii has powers of certiorari, or whether having the powers of certiorari, it erred in failure to exercise it, remains as a conclusion or decision which only this Court can make.

The issue is of grave importance for future cases. It is immaterial to Petitioner at this point in time, for whether it is one way or the other, it does not alter the fact that Petitioner has exhausted all legal remedies.

This case therefore, has a compelling justification for this Court to entertain original jurisdiction.

In *Kanaster v. Chrysler Corp* (195 F 2d, 104) the judgment of \$33,283 in favor of Kanaster was vacated and the motion for a new trial was granted. Plaintiff appealed. The Court of Appeals held that the order was interlocutory and not appealable. Appeal was dismissed.

However, proceeding under writ of certiorari, (*Kanaster v. Chrysler Corp* (199-F2d, 610) plaintiff prevailed in that action.

The Tenth Court of Appeals, Murrah, Circuit Judge held that order for a new trial is reviewable upon a writ of certiorari and that the District Judge acted beyond his jurisdiction in granting a new trial. Judgment on verdict reinstated.

D. Unnecessary delay results in undue hardship to Petitioner and favors Defendants.

Any protracted, unnecessary and prolonged litigation will exhaust Petitioner's fast dwindling finances and thus will give Defendants an unfair advantage.

Furthermore, Petitioner is fearful and apprehensive of the awesome financial power and influence of Defendants doing business as Financial Plaza of the Pacific, a combine or entity involving such financial giants as Bank of Hawaii, (Bankoh Corporation), American Savings & Loan Assn., Territorial Savings & Loan, Castle & Cooke, Inc., and Wilcox Development Co., representing themselves as a business condominium (See Defendant's for Identification, "A" (White booklet) "Financial Plaza of the Pacific Declaration of Horizontal Property Regime and By-laws of Association of Owners", Appendix A-24).

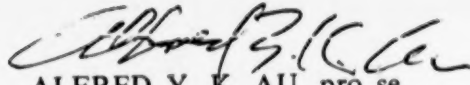
And without having to register their entity with the Department of Regulatory Agencies, State of Hawaii as a corporation, partnership or trade name. (Appendix A-29).

CONCLUSION

WHEREFOR, Petitioner prays that this Court, for the reasons stated above will issue a writ of certiorari to the Honorable John C. Lanham, Judge, First Circuit Court, State of Hawaii, his alternate or substitute.

And that upon the substantiation of the facts and allegations contained herein reaffirm the original judgment entered in favor of Petitioner, together with costs and interest, and an equal or treble amount as punitive damages, and or such other remedies as this Court deems proper and appropriate.

DATED: Honolulu, Hawaii, December 20, 1978


ALFRED Y. K. AU, pro se
947B Koko Head Ave.
Honolulu, Hawaii 96816

For Petitioner

AFFIDAVIT OF SERVICE

Affidavit of Service is hereby made, attesting to the fact that the following persons were personally delivered 3 copies of the foregoing at their last known address. To wit:

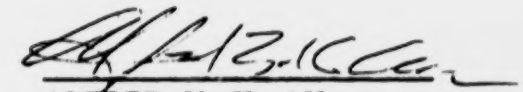
Judge John C. Lanham, First Circuit Court, State
of Hawaii, Judiciary Building

Richard K. Griffith, Attorney for Respondents,
Hoyt F. Kelly, et al.
1333 Pacific Trade Center
Honolulu, Hawaii 96813

Eddie Suzuki, Chief Clerk, Supreme Court of
the State of Hawaii,
Judiciary Building
Honolulu, Hawaii

Ronald Amemiya, Attorney General
State Capitol,
Honolulu, Hawaii

DATED: Honolulu, Hawaii, December 20, 1978


ALFRED Y. K. AU, pro se
for Petitioner

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ALFRED Y. K. AU,)
Plaintiff,) CIVIL NO. 47984
vs.) SPECIAL VERDICT
HOYT F. KELLY, et al.,)
Defendants.)

FILED IN OPEN COURT
AT 11:15 o'clock A. M.
JUL 27 1977, 19__

A. S. Sorenson
Clerk

SPECIAL VERDICT

1. Were Defendants negligent? ~~NO~~ YES

(If your answer to 1 is "yes",
then go on to 2.)

2. Was Defendants' negligence a
proximate cause of injury to the
Plaintiff? YES

(If your answer to 2 is "yes",
then go on to 3, 4 and 5. If
your answer to 1 or 2 is "no",
then do not proceed further.)

3. Amount of special damages
sustained by Plaintiff. \$ 0

4. Amount of general damages
sustained by Plaintiff. \$ 45,000

5. Was Plaintiff negligent? YES

(If your answer to 5 is "yes",
then go on to 6. If your answer
to 5 is "no", then do not proceed
further.)

6. Was Plaintiff's negligence a proximate cause of the Plaintiff's injuries?

YES

(If your answer to 6 is "yes", then go on to 7. If your answer to 6 is "no", then do not proceed further.)

7. Considering the negligence of Defendants and Plaintiff to total 100%, what percentage is attributable to:

Defendants	<u>70</u>	%
Plaintiff	<u>30</u>	%
TOTAL		100%

We, the Jury in the above-entitled cause, return the foregoing verdict.

DATED: Honolulu, Hawaii, this 27 day of July, 1977.

Alfred Y. K. Au
Foreman

Appendix A-2

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ALFRED Y. K. AU,)	CIVIL NO. 47984
)	
Plaintiff,)	JUDGMENT
)	
vs.)	
)	
HOYT F. KELLY, R. M. COOKE,)	
HENRY B. CLARK, JR., JAMES)	
T. KAWAMURA, and L. A. WILLS,)	
TRUSTEES, dba FINANCIAL)	
PLAZA OF THE PACIFIC,)	
)	
Defendants.)	

JUDGMENT

Pursuant to the verdict of the jury in this case entered on July 27, 1977, and pursuant to Rule 58 of the Hawaii Rules of Civil Procedure, the clerk is hereby ordered to enter forthwith, judgment in favor of the Plaintiff and against the Defendant in the sum of THIRTY-ONE THOUSAND FIVE HUNDRED DOLLARS (\$31,500.), together with costs.

DATED: Honolulu, Hawaii, this 29th day of July, 1977.

John C. L...
Judge of the Above-Entitled Court

I do hereby certify that this is a full, true, and correct copy of the original on file in this office.

John C. L...
Clerk, Circuit Court, First Circuit
State of Hawaii

Appendix A-3

1ST JUDGE
STATE OF HAWAII
FILED

1977 JUL 29 PM 10 40

H. SETO

In the Circuit Court of the First Circuit

State of Hawaii

ALFRED Y. K. AU,

Plaintiff,

vs.

HOYT F. KELLY, et al.,

Defendants.

Civ No 47984

NOTICE OF ENTRY OF JUDGMENT

NOTICE OF ENTRY OF JUDGMENT

Pursuant to the provisions of the Hawaii Rules of Civil Procedure, Rule 77(d), NOTICE IS
HEREBY GIVEN of the entry of JUDGMENT

in the above-entitled cause.

Dated: Honolulu, Hawaii, July 29, 1977

Copies mailed to:
(at last known address)

1. Plaintiff, Pro Se
947B Koko Head Ave.
Honolulu, HI 96816
2. Defendants
% Richard K. Griffith

BY ORDER OF THE COURT

V. CHING

Clerk of the above-entitled Court

Appendix A-4

RICHARD K. GRIFFITH 1532
1100 Ward Avenue
Honolulu, Hawaii 96814
Telephone: 548-2774

Attorney for Defendants

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ALFRED Y. K. AU,

Plaintiff,

vs.

HOYT F. KELLY, et al.,

Defendants.

CIVIL NO. 47984

MOTION FOR NEW TRIAL, OR,
IN THE ALTERNATIVE, MOTION
FOR REMITTITUR; NOTICE OF
MOTION

MOTION FOR NEW TRIAL, OR, IN THE
ALTERNATIVE, MOTION FOR REMITTITUR

Come now defendants and pursuant to Rule 59,
Hawaii Rules of Civil Procedure, hereby move this court
to set aside the verdict of the jury returned herein on
July 27, 1977 and to grant a new trial or, in the alternative,
to order a remittitur on the following grounds:

1. The verdict is contrary to the evidence in
this case.
2. The evidence in this case is totally
insufficient to show any liability on the part of the
defendants, and there is no evidence to sustain the verdict
of the jury herein.
3. The evidence considered in the most favorable
light on behalf of the plaintiff is insufficient to support

I hereby certify that a copy of the within
was duly mailed on AUG 5 1977

Alfred Y. K. Au, Pro Se,
Attorney, at his known address.
[Signature]
Defendants
Attorney for

Appendix A-5

Appendix A-5

a verdict of \$45,000 general damages that the jury rendered against the defendants herein.

4. The verdict of the jury herein is excessive and appears to have been given under the influence of passion and prejudice.

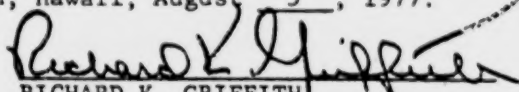
5. Defendants' rights were substantially prejudiced in that plaintiff, appearing as his own counsel, in his closing argument improperly appealed to the sympathy and prejudice of the jury by stating that he was the sole provider for his family and several relatives, and that he would have difficulty making tuition payments for his sons at the Punahou School due to the accident herein.

6. Defendants' rights were substantially prejudiced by plaintiff's frequent reference, over objections, to his inability to identify defendants as proper parties thereby improperly appealing to the sympathy and prejudice of the jury.

7. In response to a jury question, the court erred in instructing the jury, over defendants' objection, that if the jury found plaintiff to be fifty percent (50%) negligent, he would receive nothing by way of damages and the court would enter judgment for the defendants.

This motion is based upon the records and proceedings in this action.

DATED: Honolulu, Hawaii, August 5, 1977.


RICHARD K. GRIFFITH
Attorney for Defendants

STATE OF HAWAII


ALFRED Y. K. AU,)	CIVIL NO. 47984
)	
Plaintiff,)	NOTICE OF MOTION
)	
vs.)	
)	
HOYT F. KELLY, et al.,)	
)	
Defendants.)	

NOTICE OF MOTION

TO: ALFRED Y. K. AU, Pro Se
947-B Koko Head Avenue
Honolulu, Hawaii 96816

PLEASE TAKE NOTICE that the foregoing motion will be presented before the Honorable J. Lanham, Judge of the above-entitled Court, in his Courtroom at the First Circuit Court, Honolulu, Hawaii, on FRIDAY, the 26th day of August, 1977, at the hour of 8:30 o'clock a.m., or as soon thereafter as counsel can be heard.

DATED: Honolulu, Hawaii, August 5, 1977.


RICHARD K. GRIFFITH
Attorney for Defendants

Appendix A-7

ALFRED Y. K. AU
947B Koko Head Ave.
Honolulu, Hawaii, 96816
Phone: 7347235

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

1977 AUG 11 PM 3 51

Pro Se, for Plaintiff

S. IKEDA

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

ALFRED Y. K. AU,
Plaintiff,

vs.

HOYT F. KELLY, et al.,
Defendants.

CIVIL NO. 47984

MEMORANDUM IN OPPOSITION TO
MOTION FOR NEW TRIAL, OR IN
THE ALTERNATIVE, MOTION FOR
REMITTUR.

MEMORANDUM IN OPPOSITION TO MOTION FOR
NEW TRIAL AND REMITTUR

The Defendants have filed a motion for a new trial or remittur and have submitted seven (7) allegations to which Plaintiff shall respond and categorically prove to be wholly unfounded and without merit.

1. THE VERDICT IS NOT CONTRARY TO
THE EVIDENCE IN THE CASE

Medical testimony have supported the existence of permanent residual pain in Plaintiff's right wrist, aggravated by usage and temperature changes.

Expert witnesses have established Defendants' negligence in not diligently servicing and updating, for more than ten years, the double-swing doors, one of which was involved

I hereby certify that a copy of the
within was duly mailed on Aug 11 1977
to Richard K. Griffith, Attorney for Defendants.

Alfred Y. K. Au, Pro Se
for Plaintiff

Appendix A-8

ALFRED Y. K. AU
947B Koko Head Ave.
Honolulu, Hawaii, 96816
Phone: 7347235

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

1977 SEP -2 PM 1:01

Pro se, for Plaintiff

H. GETO

CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

ALFRED Y. K. AU,
Plaintiff,

vs.

HOYT F. KELLY, et al.,
Defendants.

CIVIL NO. 47984

MEMORANDUM IN OPPOSITION TO
THE VACATING OF THE JURY'S
FINDING OF \$45,000 IN GENERAL
DAMAGES; AND SUBSTITUTING THERE-
FOR THE COURT'S DETERMINATION OF
\$14,000 IN DAMAGES OR IN THE AL-
TERNATIVE, THE ORDERING OF A NEW
TRIAL.

MEMORANDUM IN OPPOSITION TO VACATING JURY'S
VERDICT AND SUBSTITUTING THEREFOR THE COURT'S
FINDINGS AND JUDGMENT.

This memorandum is filed on the following issues of law:

1. In a jury trial the Court is not vested with the right to make any findings of fact. And by that same token, the Court cannot abrogate the jury's findings without a legal cause.

"COURT'S INSTRUCTION NO. 5

Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to interpose any opinion or suggestion as to how I would resolve any of the issues of this case."

"COURT'S INSTRUCTION NO. 12

You, as jurors, are the sole judges of the credibility of all witnesses and the weight their testimony deserves."

I hereby certify that a copy of the
within was duly mailed on Sept 13 1977
to Richard K. Griffith, Attorney for Defendants.

Alfred Y. K. Au, Pro Se
for Plaintiff

Appendix A-9

RICHARD K. GRIFFITH 1532
1100 Ward Avenue
Honolulu, Hawaii 96814
Telephone: 548-2774

Attorney for Defendants

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ALFRED Y. K. AU,) CIVIL NO. 47984
)
Plaintiff,) MEMORANDUM
)
vs.)
)
HOYT F. KELLY, et al.,)
)
Defendants.)
_____)

MEMORANDUM

This memorandum is submitted in response to the Court's inquiry whether an order granting defendants' motion for new trial can expressly restrict the issue to be determined on re-trial to that involving the damages sustained by the plaintiff, or whether the Court is bound to grant a new trial on all issues herein.

I

Rule 59, Hawaii Rules of Civil Procedure, regarding the granting of new trials and amendment of judgments states, in part, as follows:

Rule 59. New Trials; Amendment of Judgments.

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues (emphasis added) (1) in any action in which there has been trial by jury

I hereby certify that a copy of the within

was duly mailed on SEP 6 1977

to Alfred Y. K. Au,

at his last known address.

R. K. Griffith
Attorney for Defendants

Appendix A-10

RICHARD K. GRIFFITH 1532
1100 Ward Avenue
Honolulu, Hawaii 96814
Telephone: 548-2774

Attorney for Defendants

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ALFRED Y. K. AU,) CIVIL NO. 47984
)
Plaintiff,) NOTICE OF TAKING DEPOSITION
) UPON WRITTEN INTERROGATORIES;
vs.) INTERROGATORIES
)
HOYT F. KELLY, et al.,)
)
Defendants.)
_____)

NOTICE OF TAKING DEPOSITION UPON
WRITTEN INTERROGATORIES

TO: ALFRED Y. K. AU, Pro Se
947-B Koko Head Avenue
Honolulu, Hawaii 96816

PLEASE TAKE NOTICE that on behalf of the defendants above named, the deposition of the party below named, or employee in charge of the employment, personnel and payroll records, will be taken on Wednesday, October 5, 1977:

Name and Address

Time

Custodian of Employment Records 9:00 A.M.
CITY COUNCIL
City & County of Honolulu
Honolulu, Hawaii

upon certain interrogatories, a copy of which is herewith served upon you, and such cross, redirect and recross

I hereby certify that a copy of the within

was duly mailed on SEP 27 1977

to Alfred Y. K. Au,


at his last known address.

R. K. Griffith
Attorney for Defendants

Appendix A-11

interrogatories as may be duly served herein, before a notary public duly authorized to administer oaths at the office of CAREY S. COWART & ASSOCIATES, whose address is Suite 311, 1037 Fort Street, Honolulu, Hawaii. The deposition is taken pursuant to Rule 31 of the Hawaii Rules of Civil Procedure.

DATED: Honolulu, Hawaii, September 22, 1977.


RICHARD K. GRIFFITH
Attorney for Defendants

Appendix A-12

RICHARD K. GRIFFITH
ATTORNEY-AT-LAW

(BOB) 548-2774

1100 WARD AVENUE
HONOLULU, HAWAII 96814

October 3, 1977

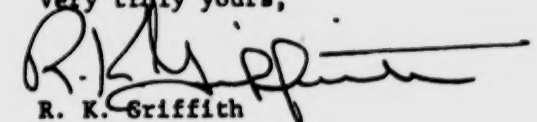
Mr. Alfred Y. K. Au
947-B Koko Head Avenue
Honolulu, Hawaii 96816

Re: Au v. Kelly, et al.
Civil No. 47984

Dear Mr. Au:

Enclosed please find an Order Granting Defendants' Motion for New Trial. If the order meets your approval, kindly sign same and return it to the undersigned for submission to the Court. A file-marked copy will be forwarded to you upon its availability.

Very truly yours,


R. K. Griffith

syc
Enclosure
cc: Honorable John C. Lanham

Appendix A-13

RICHARD K. GRIFFITH 1532
1100 Ward Avenue
Honolulu, Hawaii 96814
Telephone: 548-2774

Attorney for Defendants

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ALFRED Y. K. AU,)	CIVIL NO. 47984
)	
Plaintiff,)	ORDER GRANTING DEFENDANTS'
)	MOTION FOR NEW TRIAL
vs.)	
)	
HOYT F. KELLY, et al.,)	
)	
Defendants.)	

ORDER GRANTING DEFENDANTS'
MOTION FOR NEW TRIAL

The above-entitled Motion having come on for hearing before the Honorable John C. Lanham, Judge of the above-entitled Court, on August 26, 1977, at 8:30 a.m., and counsel and plaintiff, pro se, having been heard and the Court being fully advised,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Motion be granted, and that a new trial in the above-entitled case shall be had on all of the issues therein.

DATED: Honolulu, Hawaii, _____.

Judge of the above-entitled Court

APPROVED AS TO FORM:

ALFRED Y. K. AU, Pro Se

Appendix A-14

947B Koko Head Ave.
Honolulu, HI 96816
October 7, 1977

Richard K. Griffith
1100 Ward Avenue
Honolulu, Hawaii 96814

Dear Mr. Griffith: Re: Au v. Kelly, et al, Civil No. 47984

I am returning the instrument which you have prepared for my approval unsigned for the following reasons:

1. The judgment of the Court on the motion heard on Aug. 26, 1977 has not been returned. I had expected a written decision.

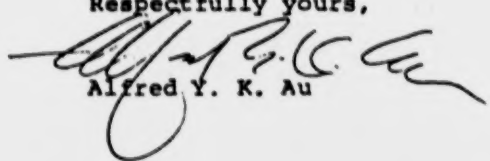
2. Particularly if it is adverse, I would like to have the legal cause or basis for vacating the jury's verdict clearly delineated in order to enable me to perfect my appeal to the Supreme Court.

3. If your submission of the instrument in question for my approval is with the prior knowledge, approval or consent of the Judge, I would like to lodge my most vehement protest of such unilateral action without my knowledge and participation, intended to prejudice my cause.

4. I would like to register a complaint to your post-trial deposition of October 5, 1977. I have not seen an order of the Court permitting it.

5. Your motion for the setting of a new trial is most premature and presumptuous at this point in time.

Respectfully yours,


Alfred Y. K. Au

Enclosure
cc: Honorable John C. Lanham

Appendix A-15

RICHARD K. GRIFFITH
ATTORNEY-AT-LAW

(808) 548-2774

1100 WARD AVENUE
HONOLULU, HAWAII 96813

October 13, 1977

Honorable John C. Lanham
2nd Floor, 426 Queen Street
Honolulu, Hawaii 96813

Re: Au vs. Kelly, et al.
Civil No. 47984

Dear Judge Lanham:

I prepared the attached Order per instructions from your law clerk and it was submitted to plaintiff for his approval as to form. Plaintiff refuses to approve the form of the Order and his explanation is attached.

Since the plaintiff is adamant in his refusal to approve the form, I am hereby submitting the Order for your signature and entry according to the decision on the Motion for New Trial rendered August 26, 1977.

Respectfully yours,

R. K. Griffith

RKG/syc
Attachments
cc: Alfred Y. K. Au

Appendix A-16

Tuesday, May 31

DATE
M T W T F S
1 2 3 4 5 6 7
8 9 10 11 12 13 14
15 16 17 18 19 20 21
22 23 24 25 26 27 28
29 30 31

Tuesday, June 14

DATE
M T W T F S
1 2 3 4 5 6 7
8 9 10 11 12 13 14
15 16 17 18 19 20 21
22 23 24 25 26 27 28
29 30 31

10/14/77

Office

10 (2) Todd Leavitt

11 (3) Bruce Rudy

12 (1) J. J. Leavitt

1 (3) Joffi me

2 (4) Al. Van

3 (5) H. H. H.

Wednesday, June 1

9 (1) White & Stein

10 (1) Sir Joffi's Petitioner

11 (1) J. J. Leavitt

12 (1) J. J. Leavitt

1 (1) J. J. Leavitt

2 (1) J. J. Leavitt

3 (1) J. J. Leavitt

Judge Leavitt

Meaning: Letter

Oct. 7, 1977

Thurs.

4. P. J.

Wednesday, June 15

Appendix A-17

October 19, 1977

Honorable John C. Lanham
First Circuit Court
Honolulu, Hawaii

Re: Au vs. Kelly, et al.
Civil No. 47984

Dear Judge Lanham:

I would like to request a continuance of the hearing scheduled for tomorrow, Thursday, October 20, 1977 at 4:00 p.m.

I have filed a Motion for Leave to File Petition for a Writ of Certiorari, with the Supreme Court, State of Hawaii.

Since the matter has been taken under advisement, I hope you will grant a continuance of the hearing which you have scheduled.

Please let me know as soon as possible.

Respectfully yours,

Alfred Y. K. Au, Pro se
For Plaintiff

Appendix A-18

To Whom It May Concern:

This is to acknowledge receipt of a copy of:

Au vs. Lanham
Petition for Writ of Certiorari
Supreme Court of the State of Hawaii
No. 6762

Date: 10/20/77

Time: 9:25 am

M. Dawson
Signature

Appendix A-19

10/19/77
4:24 pm
received

Appendix A-21

AUGUST				
S	M	T	W	F
	1	2	3	4
7	8	9	10	11
14	15	16	17	18
21	22	23	24	25
28	29	30	31	

Thursday, July 7

Saturday, July 9

Appendix A-20

RICHARD K. GRIFFITH 1532
1100 Ward Avenue
Honolulu, Hawaii 96814
Telephone: 548-2774

Attorney for Defendants

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ALFRED Y. K. AU,) CIVIL NO. 47984
Plaintiff,)
vs.) ORDER GRANTING DEFENDANTS'
HOYT F. KELLY, et al.,) MOTION FOR NEW TRIAL
Defendants.)

ORDER GRANTING DEFENDANTS'
MOTION FOR NEW TRIAL

The above-entitled Motion having come on for hearing before the Honorable John C. Lanham, Judge of the above-entitled Court, on August 26, 1977, at 8:30 a.m., and counsel and plaintiff, pro se, having been heard and the Court being fully advised,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Motion be granted, and that a new trial in the above-entitled case shall be had only on the issue of damages therein.

DATED: Honolulu, Hawaii, OCT 25 1977

John C. Lanham

Judge of the above-entitled Court

Appendix A-22

1ST CIRCUIT COURT
STATE OF HAWAII
FILED
1977 OCT 26 AM 8 14

R. S. YAMADA
CLERK

NO. 6858

IN THE SUPREME COURT OF THE STATE OF HAWAII

OCTOBER TERM 1977

ALFRED Y. K. AU,)
Plaintiff-Appellant,)
vs.)
HOYT F. KELLY, R.M. COOKE,)
HENRY B. CLARK, JR.,)
JAMES T. KAWAMURA and)
L. A. WILLS, TRUSTEES,)
dba)
FINANCIAL PLAZA OF THE)
PACIFIC,)
Defendants-Appellees.)

CIVIL NO. 47984
APPEAL FROM THE ORDER
GRANTING DEFENDANTS'
MOTION FOR NEW TRIAL,
FILED OCTOBER 26, 1977
FIRST CIRCUIT COURT
HONORABLE JOHN C. LANHAM
Judge

RECORD ON APPEAL

ALFRED Y. K. AU (Pro se)
947B Koko Head Ave.
Honolulu, Hawaii 96816

Plaintiff-Appellant

RICHARD K. GRIFFITH
1100 Ward Avenue
Honolulu, Hawaii 96814

Attorney for Defendants-
Appellees

Appendix A-23

FILED
1977 OCT 30 PM 1 35
Clerk J. H. Chan
CLERK SUPREME COURT

MINUTES:

Yellow pages attached to the rear portion of the Record on Appeal are the original minutes entered by the Clerks of Court, First Circuit Court.

DEPOSITIONS:

Deposition of Helen M. Chong;
Deposition of Alfred Y. K. Au;
Deposition of Georgiana Oliveira;

EXHIBITS:

Plaintiff's - IN EVIDENCE

- "1" Certificate from Dept. Regulatory Agencies that Financial Plaza is not registered there as corporation, partnership, or trade name
- "2-A 2-B 2-C"
Photostatic copies of front page of Au's income tax returns for '74, '75, '76

Defendant's - FOR IDENTIFICATION

- "A" (White booklet) "Financial Plaza of the Pacific Declaration of Horizontal Property Regime and By-Laws of Association of Owners"
- "B" IN EVIDENCE
Scaled architectural drawing of first floor of Tower A of Financial Plaza of the Pacific
- "C" Logs reflecting inspections of premises

CIVIL NO. 47984

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

ALFRED Y. K. AU,)
)
Plaintiff,)
)
vs.)
)
HOYT F. KELLY, R. M. COOKE,)
HENRY B. CLARK, JR.,)
JAMES T. KAWAMURA and)
L. A. WILLS, TRUSTEES,)
)
dba)
)
FINANCIAL PLAZA OF THE)
PACIFIC,)
)
Defendants.)

CIRCUIT COURT CLERK'S CERTIFICATE

I, GUNJI IZUMOTO, Clerk of the Circuit Court of the First Circuit, State of Hawaii, do hereby certify that all documents and items, as listed in the foregoing index to the Record on Appeal, are originals thereof as filed and entered of record in the above-captioned proceeding; and that they are attached hereto and made a part hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of this Court this 3rd day of January, 1978.

Gunji Izumoto
GUNJI IZUMOTO, Clerk
Circuit Court, First Circuit
State of Hawaii



1040

US

Department of the Treasury—Internal Revenue Service

EXHIBIT "2A"

1974

For the year January 1–December 31, 1974, or other taxable year beginning

NAME (If joint return, give first names and initials of both) ALFRED W. NANCY W. FU	LAST NAME FU	COUNTY OF RESIDENCE FLORIDA	Your social security number 576 69 193
Present home address (Number and street, including apartment number, or rural route) 14710 KICKHEAD AVE	Spouse's social security number 576 24 3047	City, town, or post office, State and ZIP code FT. LAUDERDALE, FL 33304	Place label within block
Occupation ACCOUNTANT	Yours HOUSEWIFE	Spouse's	

Filing Status (check only one)

- 1 ☐ Single
- 2 ☒ Married filing joint return (even if only one had income)
- 3 ☐ Married filing separately. If spouse is also filing give spouse's social security number in designated space above and enter full name here
- 4 ☐ Unmarried Head of Household (See instructions on page 5)
- 5 ☐ Widow(er) with dependent child (Year spouse died \geq 19)

Exemptions

- Regular / 65 or over / Blind
- 6a Yourself ☒ ☐ Enter number of exemptions claimed **2**
- b Spouse ☒ ☐ Enter number of exemptions claimed **2**
- c First names of your dependent children who lived with you
BRETT JEFFREY
- d Number of other dependents (from line 27) **2**
- 7 Total exemptions claimed **6**

Presidential Election Campaign Fund

- Do you wish to designate \$1 of your taxes for this fund? ☒ Yes ☐ No
- If joint return, does your spouse wish to designate \$1? ☒ Yes ☐ No

9 Wages, salaries, tips, and other employee compensation

(Attach Forms W-2. If unusual, also, see instructions on page 3.)

10a Dividends (See instructions on pages 6 and 13) **560** 10b Less exclusion **100** Balance **460**11 Interest income. [If \$400 or less, enter total without listing in Schedule B. If over \$400, enter total and list in Part II of Schedule B.] **1536 30**12 Income other than wages, dividends, and interest (from line 38) **1014536**13 Total (add lines 9, 10c, 11, and 12) **34281 16**

14 Adjustments to income (such as "sick pay," moving expenses, etc. from line 43)

15 Subtract line 14 from line 13 (adjusted gross income)

If you do not itemize deductions and line 15 is under \$10,000, find tax in Tables and enter on line 16.

If you itemize deductions or line 15 is \$10,000 or more, go to line 44 to figure tax.

CAUTION. If you have unearned income and can be claimed as a dependent on your parent's return, check here ☐ and see instructions on page 7.

5. If you were covered by a profit-sharing or pension plan, "YES" will be entered in box 7. If not covered by a qualified plan, "NO" will be entered in box 7.

16 Tax, check if from: Tax Tables ☒ Tax Rate Schedule X, Y, or Z ☐ Schedule D ☐ Schedule G OR Form 472617 Credits (from line 54) **4727 52**18 Balance (subtract line 17 from line 16c) **12 50**19 Other taxes (from line 63) **363 97**20 Total (add lines 18 and 19) **3614 30**

21a Total Federal income tax withheld (attach Forms W-2 or 1099-R)

21b 1975 estimated tax payments (include amount allowed as credit from 1974 return)

21c Earned income credit

21d Amount paid with Form 4868

21e Other payments (from line 67)

22 Total (add lines 21a through e) **3614 30**

23 If line 20 is larger than line 22, enter BALANCE DUE IRS

24 If line 22 is larger than line 20, enter amount OVERPAID

25 Amount of line 24 to be REFUNDED TO YOU

26 Amount of line 24 to be credited on 1975 estimated tax

I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which he has any knowledge.

Sign here

Taxpayer's signature (if filing jointly, BOTH must sign even if only one had income)

Preparer's signature (other than taxpayer)

Address (and ZIP Code) Preparer's Emp. Ident. or Stat. Ident. #

Appendix A-26

1040

US

Department of the Treasury—Internal Revenue Service

EXHIBIT "2B"

1975

For the year January 1–December 31, 1975, or other taxable year beginning

NAME (If joint return, give first names and initials of both) ALFRED W. NANCY W. FU	LAST NAME FU	YOUR SOCIAL SECURITY NUMBER 576 69 193	FOR PRIVATE ACT NOTIFICATION SEE PAGE 2 OF INSTRUCTIONS
PRESENT HOME ADDRESS (Number and street, including apartment number, or rural route) 14710 KICKHEAD AVE	SPOUSE'S SOCIAL SECURITY NUMBER 576 24 3047	CITY, TOWN, OR POST OFFICE, STATE AND ZIP CODE FT. LAUDERDALE, FL 33304	Place label here
OCCUPATION ACCOUNTANT	YOURS HOUSEWIFE	SPOUSE'S HOUSEWIFE	

Filing Status

- 1 ☐ Single (check only ONE box)
- 2 ☒ Married filing joint return (even if only one had income)
- 3 ☐ Married filing separately. If spouse is also filing give spouse's social security number in designated space above and enter full name here
- 4 ☐ Unmarried Head of Household (See page 5 of instructions)
- 5 ☐ Qualifying widow(er) with dependent child (Year spouse died \geq 1). See page 5 of instructions.

Exemptions

- 6a Regular ☐ Yourself ☐ Spouse Enter number of exemptions claimed **2**
- b First names of your dependent children who lived with you **BRITTANY**
- c Number of other dependents (from line 27) **2**
- d Total (add lines 6a, b, and c) **4**
- e Age 65 or over ☐ Yourself ☐ Spouse
- f Blind ☐ Yourself ☐ Spouse
- 7 Total (add lines 6d and e) **6**

Presidential Election Campaign Fund

- Do you wish to designate \$1 of your taxes for this fund? ☒ Yes ☐ No
- If joint return, does your spouse wish to designate \$1? ☒ Yes ☐ No

9 Wages, salaries, tips, and other employee compensation (Attach Forms W-2. If unusual, also, see instructions on page 3.)

10a Dividends (See instructions on pages 7 and 13) **560** 10b Less exclusion **100** Balance **460**11 Interest income. [If \$400 or less, enter total without listing in Schedule B. If over \$400, enter total and list in Part II of Schedule B.] **1536 30**12 Income other than wages, dividends, and interest (from line 38) **1014536**13 Total (add lines 9, 10c, 11, and 12) **34281 16**

14 Adjustments to income (such as "sick pay," moving expenses, etc. from line 43)

15 Subtract line 14 from line 13 (Adjusted Gross Income)

If you do not itemize deductions and line 15 is under \$10,000, find tax in Tables and enter on line 16.

If you itemize deductions or line 15 is \$10,000 or more, go to line 43 to figure tax.

CAUTION. If you have unearned income and can be claimed as a dependent on your parent's return, check here ☐ and see page 7 of instructions.

5. If you were covered by a profit-sharing or pension plan, "YES" will be entered in box 7. If not covered by a qualified plan, "NO" will be entered in box 7.

16 Tax, check if from: Tax Tables ☒ Tax Rate Schedule X, Y, or Z ☐ Schedule D ☐ Schedule G OR Form 472617 Credits (from line 54) **4727 52**18 Balance (subtract line 17 from line 16c) **12 50**19 Other taxes (from line 63) **363 97**20 Total (add lines 18 and 19) **3614 30**

21a Total Federal income tax withheld (attach Forms W-2 or 1099-R)

21b 1975 estimated tax payments (include amount allowed as credit from 1974 return)

21c Earned income credit

21d Amount paid with Form 4868

21e Other payments (from line 67)

22 Total (add lines 21a through e) **3614 30**

23 If line 20 is larger than line 22, enter BALANCE DUE IRS

24 If line 22 is larger than line 20, enter amount OVERPAID

25 Amount of line 24 to be REFUNDED TO YOU

26 Amount of line 24 to be credited on 1975 estimated tax

I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which he has any knowledge.

Sign here

Taxpayer's signature (if filing jointly, BOTH must sign even if only one had income)

Preparer's signature (other than taxpayer)

Address (and ZIP Code) Preparer's Emp. Ident. or Stat. Ident. #

Appendix A-27

EXHIBIT "2C"

17040 Department of the Treasury - Bureau of Internal Revenue
U.S. Individual Income Tax Return **1976** This space for IRS use only

For the year January 1-December 31, 1976, or other taxable year beginning 1976 ending 19

Name (If joint return, give last names and initials of both) **ALFRED V. K. HAWKINS** Last name **HU** Your social security number **576891219**

Present home address (Number and street, including apartment number, or rural route) **947 B KOKO HEAVEN AVE** Per Privacy Act Notification, see page 5 of instructions. Spouse's social security no. **5751243067**

City, town or post office, State and ZIP code **HONOLULU HI 96816** Occupation **None** Yours **None** Spouse's **None**

Filing Status

1 ☐ Single (Check only ONE box)
2 ☒ Married filing joint return (even if only one had income)
3 ☐ Married filing separately. If spouse is also filing give spouse's social security number in designated space above and enter full name here
4 ☐ Unmarried head of household. See page 7 of instructions to see if you qualify
5 ☐ Qualifying widow(er) with dependent child (Your spouse died > 19). See page 7 of instructions.

6a Regular ☐ Yourself ☐ Spouse Enter number of boxes checked **2**
b First names of your dependent children who lived with you **BRETT L** Enter number **2**
c Number of other dependents (from line 7) **2**
d Total (add lines 6a, b, and c) **6**
e Age 65 or older ☐ Yourself ☐ Spouse Enter number of boxes checked
f Blind ☐ Yourself ☐ Spouse
g TOTAL (add lines 6d and e) **6**

7 Other dependents:

Relationship	SSN	Age	Residence	By YOU, H 100%	By OTHERS including dependent
YEE WEE	576891219	19	AL	ALL	0
SHARON WEE	576891219	19	AL	ALL	0

8 Presidential Election Campaign Fund Do you wish to designate \$1 of your taxes for this fund? **Yes** No
If joint return, does your spouse wish to designate \$1? **Yes** No

9 Wages, salaries, tips, and other employee compensation (Attach Form W-2, if usual; also, see page 5 of instructions.) **25,422.00**
10a Dividends (See page 5 of instructions) **10b** Less exclusions **10c** Balance **10c**
11 Interest income (If gross dividends and other distributions are over \$400, list in Part I of Schedule B.) **11** **1492.00**
12 Income other than wages, dividends, and interest (from line 37) **LOSS** **12** **3266.14**
13 Total (add lines 9, 10c, 11 and 12) **13**
14 Adjustments to income (such as moving expenses, etc. from line 42) **14**
15a Subtract line 14 from line 13 **15a**
b Disability income exclusion (attach pay) (attach Form 3440) **15b**
c Adjusted gross income. Subtract line 15b from line 15a, then complete Part III on back. (If less than \$8,000, see page 2 of instructions on "Earned Income Credit.") **15c** **23647.89**
16 Tax, check if from: **16** **NONE**
Tax Table **Schedule G** **Form 2555** **OR** **Schedule D** **Form 4726**
17a Multiply \$35.00 by the number of exemptions on line 6d **17a**
b Enter 2% of line 17c but not more than \$180 (\$90 if box 3 is checked) **17b**
18 Balance. Subtract line 17c from line 16 and enter difference (but not less than zero) **18**
19 Credits (from line 54) **19**
20 Balance. Subtract line 19 from line 18 and enter difference (but not less than zero) **20**
21 Other taxes (from line 62) **21** **175.26**
22 Total (add lines 20 and 21) **22**
23a Total Federal income tax withheld. (Attach Form W-2, or W-2P, to form) **23a** **4,122.24**
b 1976 estimated tax payments (Include amount allowed from page 2 of instructions) **23b**
c Earned income credit (see instructions) **23c**
d Amount paid with Form 4868 **23d**
e Other payments (from line 66) **23e**
24 TOTAL (add lines 23a through e) **24** **11122.24**
25 If line 22 is larger than line 24, enter BALANCE DUE IRS (Check here ☐ If Form 2210 or Form 2210F is attached. See page 10 of instructions.) **25** **3446.98**
26 If line 24 is larger than line 22, enter amount OVERPAID **26** **3446.98**
27 Amount of line 26 to be REFUNDED TO YOU **27** **3446.98**
28 Amount of line 26 to be credited on 1977 estimated tax **28** **3446.98**

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Sign here: Your signature _____ Date _____ Preparer's signature (and employer's name, if any) _____ Date _____

Spouse's signature (if filing jointly, BOTH must sign even if only one had income) _____ Date _____

Address (and ZIP code) _____

Appendix A-28

STATE OF HAWAII
DEPARTMENT OF REGULATORY AGENCIES
Honolulu

I, WAYNE MINAMI, Director of Regulatory Agencies of the State of Hawaii, do hereby certify that FINANCIAL PLAZA OF THE PACIFIC is not registered in this Department either as a corporation, partnership, or trade name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Department of Regulatory Agencies, at Honolulu, this 21st day of July, 1977.

Wayne Minami

Director of Regulatory Agencies

By *[Signature]*
Corporation and Securities
Administrator

Chf No. **47984**
PLAINTIFFS EXHIBIT
JUL 25 1977
in Evidence
Chf *[Signature]*

Appendix A-29

NO. 6762

IN THE SUPREME COURT OF THE STATE OF HAWAII

OCTOBER TERM 1977

ALFRED Y. K. AU,

Petitioner,

vs.

JOHN C. LANHAM, Circuit Judge,

Respondent.

MOTION FOR LEAVE TO FILE PETITION

FOR A WRIT OF CERTIORARI

1977 OCT 19 PM 4 21
Clarence J. H. Chan
CLERK SUPREME COURT

FILED

ALFRED Y. K. AU, Pro Se
947B Koko Head Ave,
Honolulu, Hawaii 96816
Phone: 7347235

For Petitioner

NO. 6762

IN THE SUPREME COURT OF THE STATE OF HAWAII
OCTOBER TERM 1977

ALFRED Y. K. AU,
Petitioner,
vs.

JOHN C. LANHAM, Circuit Judge,
First Circuit Court.
Respondent.

PETITION FOR WRIT OF CERTIORARI

CLERK SUPREME COURT

FILED

1977 OCT 20 AM 8 54
D. W. C.

ALFRED Y. K. AU, Pro Se
947B Koko Head Ave.
Honolulu, Hawaii 96816
Phone: 7347235

For Petitioner

Appendix B-2

NO. 6762

IN THE SUPREME COURT OF THE STATE OF HAWAII
OCTOBER TERM 1977

ALFRED Y. K. AU,
Petitioner,

v.

JOHN C. LANHAM, Circuit Judge,
Respondent.

ORDER

Upon considering the petition for writ of certiorari,
and sufficient ground for issuance of the writ not appearing,
The petition for writ of certiorari is denied.

DATED: Honolulu, Hawaii, November 4, 1977.

BY THE COURT:

William A. Richardson
Chief Justice



Appendix B-3

NO. 6809

IN THE SUPREME COURT OF THE STATE OF HAWAII

OCTOBER TERM 1977

ALFRED Y. K. AU,
Petitioner,

v.

JOHN C. LANHAM, Circuit Judge,
First Circuit Court,

Respondent.

ORDER

The Petition for Writ of Certiorari filed
November 22, 1977 is hereby denied.

DATED: Honolulu, Hawaii, December 5, 1977.

BY THE COURT:

William A. Richardson
Chief Justice



Appendix B-4

NO. 6858

IN THE SUPREME COURT OF THE STATE OF HAWAII

OCTOBER TERM 1977

ALFRED Y. K. AU,
Plaintiff-Appellant,
vs.

HOYT F. KELLY, R.M. COOKE,
HENRY B. CLARK, JR.,
JAMES T. KAWAMURA and
L. A. WILLS, TRUSTEES,

dba

FINANCIAL PLAZA OF THE
PACIFIC,

Defendants-Appellees.

CIVIL NO. 47984

APPEAL FROM THE ORDER
GRANTING DEFENDANTS'
MOTION FOR NEW TRIAL,
FILED OCTOBER 26, 1977

FIRST CIRCUIT COURT

HONORABLE JOHN C. LANHAM,
Judge

ORDER

Upon consideration of Appellees' Motion to
Appeal and the memoranda in support and opposition, and it
appearing that no final judgment has been entered and this
appeal is interlocutory,

The appeal is hereby dismissed. See Morneau v.
Kaiser Foundation Hosp., 48 Haw. 534, 404 P.2d 899 (1965).

Appellees' request for taxation of costs is denied
without prejudice, Appellees having failed to specify the
items for which taxation is requested.

DATED: Honolulu, Hawaii, October 6, 1978.

BY THE COURT:

William A. Richardson
Chief Justice



Appendix B-5

FILED
OCT 11 1978
CLERK SUPREME COURT